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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In the Matter of the Application of CLICK
CONSULT LIMITED, Petitioner, for an Order
Pursuant to 28 U.S.C. § 1782 to Obtain
Discovery from Amazon Web Services for Use
in a Foreign Proceeding

MS 130135 RSL

DECLARATION OF ANDREW RALPH
WHALLEY IN SUPPORT OF CLICK
CONSULT LIMITED'S SECTION 1782
APPLICATION

Andrew Ralph Whalley declares as follows:

1. I am over the age of eighteen, competent to testify in the above captioned matter, and make this declaration based upon personal knowledge.
2. I am partner in the law firm of DWF LLP in Liverpool, England. I am Solicitor licensed to practice law in the United Kingdom. I serve as external counsel to Click Consult Limited ("Click") in the United Kingdom.
3. Click is a Private Limited Company under the laws of the United Kingdom, with its head office at Unit B1, Willow House Oaklands Office Park, Hooton Road, Hooton, Cheshire, England.
4. Attached hereto as **Exhibit A** is a true and correct copy of the Witness Statement of Matthew David Bullas, along with Exhibits MDB1 – MBD8 thereto, filed in the High Court of Justice, Chancery Division, England, on May 30, 2013.

DECLARATION OF ANDREW WHALLEY - 1

OLES MORRISON RINKER & BAKER, LLP
701 PIKE STREET, SUITE 1700
SEATTLE, WA 98101-3930
PHONE: (206) 623-3427
FAX: (206) 682-6234

1 5. On May 23, 2013, as external counsel for Click, I was contacted by Julius Chen,
2 Esq., in-house counsel for Amazon. On May 24, 2013, I spoke to Mr. Chen and informed him
3 of the discovery Click sought, and of Click's intent to seek a *Norwich Pharmacal* Order from the
4 English High Court to order discovery. I also provided Mr. Chen with a draft of the proposed
5 discovery order. During that conversation, Mr. Chen confirmed to me that Amazon had no issue
6 with the terms of the draft Order. He further confirmed that Amazon would be able to provide
7 customer details (name and address), but not the bank account details for a specific customer if
8 served with an Order from the English High Court. He also confirmed that Amazon had
9 identified that the sender of the Email was a customer of Amazon's customer.

10 6. *Norwich Pharmacal* orders may be sought from courts in the United Kingdom
11 when a wronged party needs information from a third party who can identify an otherwise
12 unknown wrongdoer. An order is proper when: (1) there is a reasonable basis to allege that a
13 wrong has actually been committed; (2) the disclosure of documents or information from the
14 third party is needed to enable action against the wrongdoer; (3) the respondent is not a mere
15 witness, but is sufficiently involved in the wrongdoing as to have facilitated it, even if innocently,
16 so they are in a position to provide the information; and (4) the order is necessary in the
17 interests of justice on the facts of the case. Under English law, such an order allows the
18 discovery of documents and information from a third party, without the need to actually file an
19 action against the person from whom the discovery is sought.

20 7. Click does not suggest that Amazon is guilty of any wrongdoing in relation to the
21 Email, and Click does not intend to pursue any claims against Amazon in relation to the Email.
22 While Amazon is a party to the *Norwich Pharmacal* Order, Amazon, it will not a party in the civil
23 proceedings to which the sought after materials are relevant.

24 8. It is Click's position that the information and documentation in Amazon's
25 possession will reveal, or alternatively contribute to the revelation of, the identity of the individual
26 who subscribed for the Amazon internet service which was used to send the Email. The

DECLARATION OF ANDREW WHALLEY - 2

OLES MORRISON RINKER & BAKER, LLP
701 PIKE STREET, SUITE 1700
SEATTLE, WA 98101-3930
PHONE: (206) 623-3427
FAX: (206) 682-6234

1 Amazon EC2 Instance rental transaction contains important information which will assist in
2 identifying the author of the Email. Without the information and/or documentation from Amazon,
3 Click will be unable to identify the author(s) of the Email and take action against him/her,
4 including action to stop future conduct. As external counsel for Click, I have reason to believe
5 that the information and documentation that Click seeks from Amazon will lead to the
6 identification of the author of the Email. This information will allow the Click to take action
7 against the author and to stop further communications of this nature.

8 9. As a result of Amazon's refusal to produce the requested information absent a
9 court order, Click applied to the English High Court for a *Norwich Pharmacal* Order against
10 Amazon for disclosure of information relating to the identity of the Email's author.

11 10. On June 27, 2013, the English High Court issued the *Norwich Pharmacal* Order
12 sought by Click, compelling Amazon to provide certain information to Click's counsel. Attached
13 hereto as **Exhibit B** is a true and correct copy of that order is attached hereto

14 11. On July 2, 2013, I sent a copy of the *Norwich Pharmacal* Order to Amazon's
15 counsel, Julius Chen. Upon receiving the order, Mr. Chen informed me that Amazon would not
16 provide any information or documents in response to the *Norwich Pharmacal* Order. Mr. Chen
17 further informed me that Amazon would only provide the requested information and documents
18 in response to a court order from a United States jurisdiction.

19 12. The discovery of information regarding the subject Amazon IP address is sought
20 for the purpose of establishing, aa a minimum, the identity of the person(s) who have defamed
21 and harassed Click and its chairman, so as to permit Click (and/or its chairman) to initiate claims
22 against the defamer/harasser in an adjudicative proceeding before an English court.

23 13. Click's Section 1782 application is not an attempt to circumvent foreign proof-
24 gathering restrictions.

25 14. Based on my knowledge of the laws of the United Kingdom as a Solicitor
26 licensed to practice law in that country, I believe that a United Kingdom court would permit the

DECLARATION OF ANDREW WHALLEY - 3

OLES MORRISON RINKER & BAKER, LLP
701 PIKE STREET, SUITE 1700
SEATTLE, WA 98101-3930
PHONE: (206) 623-3427
FAX: (206) 682-6234

1 use of evidence, obtained with the aid of Section 1782, in the contemplated action against the
2 unidentified defamer/harasser.

3 15. Click's discovery requests are narrowly tailored to identify any person that used
4 Amazon's products to facilitate the harassment, breach of confidence, and defamation of Click
5 and its employees. The universe of responsive documents is thus likely to be reasonably
6 focused and easily searchable, avoiding any undue burden on Amazon.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct.

9 *5 St Paul's Square*
Old Hall Street
10 DATED at Liverpool L3 9AE, United Kingdom, this 10th day of September, 2013.
11 *Gyford, United Kingdom*

12 
13 Andrew Ralph Whalley

14 4826-9547-8293, v. 1

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DECLARATION OF ANDREW WHALLEY - 4

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